

# HOUSE . . . . . No. 892

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others for legislation to establish crime victim restitution. The Judiciary.

## The Commonwealth of Massachusetts

### PETITION OF:

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In the Year Two Thousand and Five.

### AN ACT RELATIVE TO ESTABLISHING CRIME VICTIM RESTITUTION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws, as appearing in the 2002 Offi-  
2 cial Edition, are hereby amended by inserting after chapter 258C  
3 the following new chapter:—

#### 4 CHAPTER 258D.

5 Section 1.

6 The following words as used in this chapter shall have the  
7 following meanings, unless the context otherwise requires:—

8 “Clerk”, the clerk of the court in which the restitution order  
9 was entered;

10 “Criminal conduct”, any conduct for which a person pleaded  
11 guilty or nolo contendere or was found or adjudicated guilty or  
12 delinquent by a court of competent jurisdiction, or for which a

13 judge made a finding of sufficient facts to support a finding of  
14 guilty or delinquency, whether or not the person was placed on  
15 probation without sentence or under a suspended sentence or the  
16 case was placed on file;

17 “Financial losses”, actual monetary or property losses or lia-  
18 bility for such losses, to the extent not payable by an insurer or  
19 any public benefit program, including the value of property taken,  
20 destroyed, broken or otherwise harmed, lost wages and other  
21 crime-related financial losses, including medical and counseling  
22 expenses, but not including punitive damages, pain and suffering,  
23 or loss of consortium;

24 “Financial impact report”, a standardized form provided to the  
25 victim by the prosecutor or victim-witness advocate, with sup-  
26 porting documentation, which describes the amount of each item  
27 or element of the victim’s financial losses and is used by the court  
28 in determining restitution;

29 “Offender”, a person who has engaged in criminal conduct  
30 which results in financial losses to a victim;

31 “Prosecutor”, the attorney general, assistant attorneys general,  
32 district attorney, assistant district attorneys, other attorneys spe-  
33 cially appointed to aid in the prosecution of a case, law students  
34 approved for practice pursuant to and acting as authorized by the  
35 rules of the supreme judicial court, or any other person acting on  
36 their behalf, including victim-witness advocates and police prose-  
37 cutors;

38 “Restitution”, payment of financial losses to a victim in an  
39 amount and in the manner provided by the offender’s restitution  
40 payment plan. Restitution shall also include the reimbursement of  
41 the victim compensation program for payments made to a victim  
42 as a result of the offender’s criminal conduct;

43 “Restitution order”, a written judgment by the court which  
44 includes a finding of the victim’s total financial losses and a deter-  
45 mination of the offender’s restitution payment plan. A restitution  
46 order issued pursuant to this chapter shall also be enforceable as a  
47 civil judgment;

48 “Restitution payment plan”, a schedule or plan of payments  
49 which specifies the amount, terms and dates of a court’s determi-  
50 nation for payment of restitution by an offender;

51 “Victim”, any natural person who suffers financial losses as a  
52 direct result of the offender’s criminal conduct, other than a  
53 dependent of the offender whose financial losses result directly  
54 from the punishment imposed upon the offender by the court for  
55 such criminal conduct;

56 “Victim-witness advocate”, a person employed by a prosecu-  
57 tor’s office or other criminal justice agency to assist victims and  
58 witnesses, including, but not limited to, assisting victims in  
59 obtaining the rights enumerated under this chapter;

60 “Victim compensation program”, the commonwealth’s program  
61 of payments to victims of crime authorized under chapter 258C of  
62 the General Laws;

63 “Wage assignment”, an automatic routine transfer of a portion  
64 of an offender’s wages by an employer to a court to satisfy a resti-  
65 tution order.

66 Section 2.

67 Any victim who suffers financial losses as a result of an offend-  
68 er’s criminal conduct shall have the right to receive restitution  
69 from the offender for the losses the victim suffers. The victim  
70 compensation program shall also be eligible for restitution for  
71 victim compensation payments it makes to the victim or on the  
72 victim’s behalf. The court shall order the offender to pay restitu-  
73 tion in every case in which a victim suffers financial losses and  
74 seeks restitution for such losses. This statute shall not bar persons  
75 otherwise eligible for restitution under other statutes from seeking  
76 or receiving restitution.

77 Section 3.

78 Restitution ordered pursuant to this chapter shall, to the greatest  
79 extent possible, be of a dollar amount that is sufficient to fully  
80 reimburse the victim for crime-related losses the victim has sus-  
81 tained. In determining the amount of financial losses suffered by  
82 the victim by the offender’s criminal conduct, the court shall con-  
83 sider the following items to be reasonable expenses:

84 (a) medical costs, including durable medical equipment and  
85 prosthetic or auditory devices; ophthalmic care, including eye-  
86 glasses; crime-related reconstructive surgery not covered by insur-  
87 ance; dental care, including orthodontia or other therapeutic  
88 devices; individual, couple, family or group counseling that is  
89 crime-related; physical and occupational therapy or other rehabili-  
90 tation services or equipment;

91 (b) expenses incurred in obtaining ordinary and necessary serv-  
92 ices that the victim, if not injured, would have performed, not for  
93 income but for the benefit of the victim or a member of the vic-  
94 tim's family;

95 (c) loss of wages or income or dependent care expenses of the  
96 victim due to injury arising from the offender's criminal conduct;

97 (d) reasonable expenses related to funeral and burial or crema-  
98 tory services;

99 (e) the actual replacement value of stolen or damaged property  
100 or the cost of repairing such property, whichever is less;

101 (f) travel or moving expenses;

102 (g) insurance deductibles and co-payments;

103 (h) other reasonable out-of-pocket expenses arising from the  
104 offender's criminal conduct.

105 The determination of the victim's financial losses shall be made  
106 by the court independently of the offender's ability to pay and shall  
107 specify the type and amount of each loss and the total amount of  
108 each victim's financial losses. Once the court determines the total  
109 amounts of each victim's financial losses, the court shall note that  
110 amount on the record as the first part of the restitution order. The  
111 court's determination of the total amount of the victim's financial  
112 losses shall automatically constitute a civil judgment against the  
113 offender for the full amount of such losses and shall have force and  
114 effect for a period not longer than 20 years.

115 Section 4.

116 Once the court has determined the victim's financial losses, the  
117 court shall make an evaluation of the offender's ability to pay  
118 restitution for the victim's financial losses. It shall be assumed  
119 that any offender, including a juvenile offender, has the ability to  
120 pay the full amount of the victim's financial losses upon sen-  
121 tencing, unless the offender is able to establish that the offender is  
122 presently unable to earn the total amount of such losses or does  
123 not have sufficient resources to otherwise repay such losses.

124 If the offender cannot pay the full amount of the victim's finan-  
125 cial losses immediately, the court shall establish a restitution pay-  
126 ment plan as part of the restitution order. In determining the terms  
127 and schedule of an offender's restitution payment plan, the court  
128 shall consider the following:

129 (a) the actual or potential financial resources of the offender on  
130 a monthly basis, including any governmental assistance or prison  
131 earnings;

132 (b) expected proceeds from civil litigation, insurance claims or  
133 contractual obligations of the offender;

134 (c) any assets of the offender;

135 (d) any cash bail that has been posted by the offender;

136 (e) the financial needs of the offender and the offender's depen-  
137 dents on a monthly basis;

138 (f) the total amount of the offender's court-ordered financial  
139 obligations and penalties, including other outstanding restitution  
140 orders or civil judgments against the offender;

141 (g) the offender's work history;

142 (h) the offender's age and level of education;

143 (i) the restitution payment history of the offender, if any;

144 (j) the rehabilitative effect of paying restitution on the offender  
145 and the effect of the method of payment;

146 (k) the possibility of repairing or returning the victim's dam-  
147 aged or stolen property;

148 (l) the full amount of the victim's financial loss;

149 (m) such other factors as the court deems appropriate.

150 Section 5.

151 Evidence of financial loss sustained by the victim shall be sub-  
152 mitted to the court by means of a financial impact report. Addi-  
153 tional information may be offered during a restitution hearing if  
154 financial losses have not been fully documented or are disputed by  
155 the offender. The financial impact report shall be supported by  
156 copies of appropriate receipts and the victim's signature, signed  
157 and sworn under the pains and penalties of perjury. If a victim  
158 knowingly makes false statements of fact on the financial impact  
159 report, the victim may be penalized by rendering the victim ineli-  
160 gible for restitution, in addition to other remedies provided by  
161 law.

162 Each party shall have the right to present such evidence as may  
163 be relevant to the issue of restitution. The amount of restitution  
164 ordered shall be determined by the court according to a prepon-  
165 derance of the evidence. The burden of demonstrating the amount  
166 of financial losses sustained by a victim as a result of the offense  
167 shall be on the prosecution. The burden of rebutting the presump-

168 tion of the offender's ability to pay restitution shall be on the  
169 offender.

170 Section 6.

171 (a) If at time of sentencing, the court finds that a victim has  
172 suffered financial losses, the court shall order restitution to each  
173 victim and, where appropriate, to the victim compensation pro-  
174 gram, as a separate written order in addition to any other penalty  
175 or assessment imposed on the offender. The restitution order shall  
176 consist of two parts. First, the court shall note the full amount of  
177 each victim's financial losses and specify the amount and type of  
178 each element comprising the loss. Second, the court shall establish  
179 a restitution payment plan based on the offender's ability to pay.  
180 As part of such plan, the court shall establish a priority for pay-  
181 ments of restitution, if necessary, and any other special conditions  
182 as the court deems appropriate. If the offender is sentenced to a  
183 period of incarceration, the restitution payment plan must be  
184 incorporated into the mittimus.

185 (b) If the offender is placed on probation, the restitution pay-  
186 ment plan must be incorporated into the probation contract and  
187 restitution shall be a condition of probation. If the offender is not  
188 incarcerated or placed on probation, the restitution payment plan  
189 must provide that the obligation to pay restitution begins no later  
190 than 60 days after the restitution order is issued. If the court  
191 orders the offender to return or repair stolen or damaged property,  
192 the court shall specify a date by which the property must be  
193 returned or repaired. If not otherwise provided by the court under  
194 this section, restitution shall be made by the offender immediately  
195 upon sentencing.

196 (c) A restitution order issued pursuant to this chapter consti-  
197 tutes a judgment and lien on behalf of the victim against all prop-  
198 erty of a liable offender for the full amount of the victim's  
199 financial losses as determined by the court pursuant to section 4 of  
200 this chapter, and on behalf of the victim compensation program  
201 for the full amount of compensation that has been paid to or on  
202 behalf of the victim. A judgment of restitution may be enforced by  
203 the commonwealth, a victim, a deceased victim's estate or any  
204 other beneficiary of the judgment in the same manner as a civil  
205 judgment. Upon the entry of an order of restitution, or at any other  
206 time deemed necessary, the court may, in order to secure satisfac-

207 tion of a restitution order, issue an attachment order directing a  
208 financial institution to freeze some or all of the funds or assets  
209 deposited with or held by the financial institution by or on behalf  
210 of an account holder who is an offender.

211 (d) The court may also enter a separate order for wage assign-  
212 ment directing a payor to deduct from all income due and payable  
213 to the offender the amount required by the court to meet all or part  
214 of the offender's restitution payment plan. The wage assignment  
215 order shall be effective so long as the restitution order upon which  
216 it is based remains unsatisfied or until further order of the court.  
217 Such enforcement provisions may be made at the time of sen-  
218 tencing or at any later date while the restitution or any part thereof  
219 remains unpaid. A recommendation to the court for such assign-  
220 ment may be initiated by the victim or the commonwealth.

221 (e) Any monies that are owed by the commonwealth to an  
222 offender who is under a restitution order, including but not limited  
223 to lottery winnings and tax refunds, shall be assigned first to dis-  
224 charge the restitution order to the full extent of the unpaid total  
225 financial losses, regardless of the payment schedule in the restitu-  
226 tion payment plan.

227 (f) Any monies from a damage award won by an offender who  
228 is under a restitution order shall first be used to satisfy the restitu-  
229 tion order.

230 Section 7.

231 (a) The prosecutor or victim-witness advocate upon first con-  
232 tact with the victim shall inform the victim of the right to receive  
233 restitution for financial losses caused by the offender's criminal  
234 conduct and of the victim's rights of enforcement under this  
235 chapter in the event the offender does not comply with the order.  
236 The prosecutor shall obtain from the victim a financial impact  
237 report and any other records documenting the victim's losses,  
238 submit such report and records to the court, and recommend an  
239 amount of restitution and a restitution payment plan to be made by  
240 the offender. For cases in which a plea agreement with the  
241 offender is to be recommended to the court, and the victim has  
242 suffered financial losses and requests restitution, the prosecutor  
243 shall include payment of restitution to the victim as part of any  
244 plea agreement. If there is no request for restitution by the victim  
245 or the victim compensation program, the prosecutor shall inform

246 the court that there is no request and state the grounds therefore  
247 on the record. The prosecutor or victim-witness advocate shall  
248 inform the victim and the victim compensation program of the  
249 amount and terms of restitution ordered by the court, and shall  
250 provide a copy of the restitution order to the victim and to the  
251 victim compensation program.

252 (b) If a victim has conferred with the prosecutor about restitu-  
253 tion but a specific amount of restitution cannot be conclusively  
254 determined as part of the plea agreement or prior to sentencing,  
255 the offender shall be advised by the prosecutor of the general  
256 range of financial losses, with maximum and minimum amounts,  
257 that may be owed to the victim in restitution as part of the plea  
258 agreement. The offender shall either stipulate to such range as part  
259 of the plea agreement, or sentencing shall be deferred until a fixed  
260 amount of restitution can be determined by the court through a  
261 restitution hearing. If a victim has not conferred with the prose-  
262 cutor about restitution and a specific amount of restitution cannot  
263 be conclusively determined as part of a plea agreement, the court  
264 may order the offender to pay restitution in an amount to be deter-  
265 mined at a later date, but no later than 30 days from the date of  
266 sentencing.

267 Section 8.

268 For any order of restitution made pursuant to this chapter, the  
269 offender shall have the right to a hearing before a judge to deter-  
270 mine the amount of restitution, if the offender objects to the im-  
271 position, terms, amount or distribution of the restitution  
272 recommended by the prosecutor.

273 A restitution hearing must occur within 30 days of the date of  
274 sentencing. If the court holds a restitution hearing, the court must  
275 notify the offender, the offender's attorney, the victim, and the  
276 prosecutor at least five business days before the hearing.

277 A victim has the right to be present and heard at the hearing. If  
278 the victim is not present when the hearing is scheduled, but has  
279 communicated any request for restitution or other concerns to the  
280 prosecutor, the prosecutor shall make them known to the court.  
281 Any dispute as to the proper amount or type of restitution or the  
282 portion of the restitution suspended or not suspended shall be  
283 resolved by the court.



284 Section 9.

285 If an offender is placed on probation, and the court orders the  
286 offender to pay restitution, restitution shall be a condition of pro-  
287 bation. The probation officer assigned to supervise the offender  
288 shall:

289 (a) monitor and enforce the offender's compliance with the  
290 restitution order;

291 (b) advise the offender on obtaining employment, if the  
292 offender is unemployed;

293 (c) advise the offender of the importance of making restitution  
294 to the victim and the consequences of non-payment;

295 (d) attempt to determine whether the offender has any hidden  
296 assets or income;

297 (e) confer with and provide information to victims regarding  
298 the offender's restitution obligation to them;

299 (f) maintain records of the offender's restitution account.

300 If the offender fails to comply with the restitution order, the  
301 court may revoke probation. In determining whether to revoke  
302 probation, the court shall consider the willfulness of the offender's  
303 failure to pay restitution and any other special circumstances that  
304 may have a bearing on the offender's ability to pay. If the court  
305 determines that the offender's failure to comply with the restitu-  
306 tion order is willful, the court shall revoke probation. If the court  
307 determines that the offender's failure to comply was not willful,  
308 the court may extend the period of probation until the restitution  
309 payment plan is satisfied or may modify the terms of the restitu-  
310 tion payment plan pursuant to 12B of this chapter.

311 An offender who is on probation shall make payments to his  
312 supervising probation officer. Probation officers shall give  
313 receipts to the offender and shall keep records of all payments  
314 made by the offender and transmit such records monthly to the  
315 restitution information tracking system in the administrative office  
316 of the trial court pursuant to 12B of this chapter. Probation offi-  
317 cers shall transfer all payments made to them by offenders on a  
318 monthly basis to the victim and, where appropriate, to the victim  
319 compensation program, pursuant to section 14 of this chapter.  
320 Probation officers may not keep a restitution payment for longer  
321 than 30 days. When the restitution payment plan has been satis-  
322 fied, the probation officer shall provide notice to the clerk, to the

323 victim, and to the restitution information tracking system. A  
324 victim has the right to ask the offender's probation officer to  
325 request a probation review hearing if the offender fails to pay  
326 restitution as required in the restitution payment plan.

327 Section 10.

328 (a) If an offender is sentenced to a period of incarceration and  
329 the court orders the offender to pay restitution, the court may  
330 require the offender to make payment of restitution during the  
331 period of incarceration or once the offender is released. If an  
332 offender is placed on work release through a program under con-  
333 trol of the department of correction, a county sheriff or the depart-  
334 ment of youth services, restitution payments shall be a condition  
335 of work release.

336 (b) An order for restitution shall be enforced by any correc-  
337 tional or detention facility by withholding up to 50 per cent of the  
338 offender's prison earnings or other monies maintained by the  
339 facility on a monthly basis, provided that payment of the victim  
340 witness assessment ordered pursuant to section eight of chapter  
341 258B shall be made first.

342 (c) Correctional officials shall transmit such payments to the  
343 victim on a monthly basis and, where appropriate, to the victim  
344 compensation program, pursuant to section 14 of this chapter.  
345 Correctional officials may not keep a restitution payment for  
346 longer than 30 days. Correctional officials shall give receipts to  
347 the offender and shall keep records of all payments made by the  
348 offender and transmit such records monthly to the restitution  
349 information tracking system in the administrative office of the  
350 trial court pursuant to section 12B of this chapter. When the resti-  
351 tution payment plan has been satisfied, the correctional officer  
352 shall provide notice to the clerk, to the victim, and to the restitu-  
353 tion information tracking system.

354 Section 11.

355 When the parole board considers the release on parole of an  
356 inmate who has an outstanding restitution order, the parole board  
357 shall review the status of the offender's restitution payment. The  
358 parole board shall make fulfillment of the restitution payment plan  
359 a condition of parole for any offender to be paroled still owing  
360 restitution. If necessary, the parole board may ask the court to  
361 modify the existing restitution payment plan and shall provide a

362 copy of such modified restitution payment plan to the victim and  
363 to the victim compensation program.

364 The parole officer assigned to supervise the offender shall:

365 (a) monitor and enforce the offender's compliance with the  
366 restitution order;

367 (b) advise the offender on obtaining employment, if the  
368 offender is unemployed;

369 (c) advise the offender of the importance of making restitution  
370 to the victim and the consequences of non-payment;

371 (d) attempt to determine whether the offender has any hidden  
372 assets or income;

373 (e) confer with and provide information to victims regarding  
374 the offender's restitution obligation to them;

375 (f) maintain records of the offender's restitution account.

376 Failure of the offender on parole to comply with the terms of  
377 the restitution payment plan shall constitute a violation of a condi-  
378 tion of parole and the parole board may revoke parole. In deter-  
379 mining whether to revoke parole, the parole board shall consider  
380 the willfulness of the offender's failure to pay and any other  
381 special circumstances that may have a bearing on the offender's  
382 ability to pay. If the parole board determines that offender's  
383 failure to comply with the restitution payment plan is willful, the  
384 parole board shall revoke parole. If the parole board determines  
385 that the offender's failure to comply was not willful, the parole  
386 board may seek to modify the terms of the restitution order pur-  
387 suant to section 12B of this chapter.

388 An offender who is on parole shall make payments to his super-  
389 vising parole officer. Parole officers shall give receipts to the  
390 offender and shall keep records of all payments made by the  
391 offender and transmit such records monthly to the restitution  
392 information tracking system in the administrative office of the  
393 trial court pursuant to section 12B of this chapter. Parole officers  
394 shall transfer all payments made to them by offenders on a  
395 monthly basis to the victim and, where appropriate, to the victim  
396 compensation program, pursuant to section 14 of this chapter.  
397 Parole officers may not keep a restitution payment for longer than  
398 30 days. When the restitution payment plan has been satisfied,  
399 the parole officer shall provide notice to the clerk, to the victim,  
400 and to the restitution information tracking system. A victim has

401 the right to ask the offender's parole officer to request a parole  
402 review hearing if the offender fails to pay restitution as required in  
403 the restitution payment plan.

404 If the parole board or supervising parole officer is considering  
405 any request of an offender owing restitution to be paroled into  
406 another state, the parole board or supervising parole officer must,  
407 prior to granting permission for such transfer, make arrangements  
408 with the parole department of the other state that restitution must  
409 be a condition of parole. If the offender willfully fails to pay the  
410 restitution once in another state, the offender may forfeit the right  
411 of transfer and may be returned to the commonwealth for a parole  
412 review hearing based on failure to pay restitution.

413 Section 12.

414 (a) An offender who is not incarcerated or on probation or  
415 parole shall make payments to the clerk. The clerk shall give  
416 receipts to the offender and shall keep records of all payments  
417 made by the offender and transmit such records monthly to the  
418 restitution information tracking system in the administrative office  
419 of the trial court pursuant to section 12B of this chapter. The  
420 clerk shall transfer all payments made to them by offenders on a  
421 monthly basis to the victim and, where appropriate, to the victim  
422 compensation program, pursuant to section 14 of this chapter.  
423 The clerk may not keep a restitution payment for longer than 30  
424 days. When the restitution payment plan has been satisfied, the  
425 clerk shall provide notice to the victim and to the restitution infor-  
426 mation tracking system.

427 (b) There shall be established a restitution information tracking  
428 system within the administrative office of the trial court to receive  
429 monthly reports of records of all payments made by offenders to  
430 probation officers, parole officers, correctional officials and clerks  
431 regarding restitution payments. The restitution information  
432 tracking system shall be a computerized database including infor-  
433 mation on the imposition and collection of all victim restitution  
434 orders. Upon request, the restitution information tracking system  
435 shall make available to the victim or the offender a status report  
436 noting payments received, payments disbursed, and the out-  
437 standing balance, if any, owed to the victim or victim compensa-  
438 tion program. The restitution information tracking system shall  
439 compile data regarding restitution orders on a regular basis and

440 make it available to criminal justice agencies upon request and to  
441 the General Court once a year.

442 Section 13.

443 (a) If an offender is more than 30 days late on payment of  
444 restitution or an installment thereof, the offender is delinquent in  
445 payment of the restitution order. Any offender who is under parole  
446 or probation supervision and is delinquent with respect to restitu-  
447 tion shall be required to participate in a review hearing conducted  
448 by the supervising parole or probation officer to discuss the status  
449 of the offender's restitution payment plan. If an offender is more  
450 than 60 days late on payment of restitution or an installment  
451 thereof, the offender is in default of the order. The court, on  
452 motion of the victim, the victim compensation program, the prose-  
453 cutor, the supervising probation officer or supervising parole  
454 officer, may require the offender to show cause why the default  
455 should not be treated as willful and may issue a summons or a  
456 warrant of arrest for the offender's appearance. Unless the  
457 offender shows that the default was not an intentional refusal to  
458 obey the order of the court or a failure to make a good faith effort  
459 to make the payment, the court shall find that the default was  
460 willful and shall order that the offender be committed until the  
461 restitution, or a specified portion of it, is paid, or unless other  
462 arrangements can be made to secure payment. If it appears that the  
463 offender's default in the payment of restitution is not willful, the  
464 court may make an order allowing the offender additional time for  
465 payment or otherwise modifying the restitution payment plan.

466 (b) If the offender is in default and is employed, the court may  
467 order a mandatory wage assignment. Recommendation for manda-  
468 tory wage assignment may be initiated by the victim, the victim  
469 compensation program, or the agency responsible for monitoring  
470 the offender's payments or the prosecutor if the offender is not  
471 being supervised. Upon receipt of a request seeking mandatory  
472 wage assignment or on its own initiative, the court shall issue a  
473 wage assignment order directing the employer to withhold a speci-  
474 fied amount each month. Once a wage assignment order is entered  
475 the amount shall be ongoing until the full restitution obligation is  
476 satisfied, or the wage assignment order is modified.

477 (c) When an offender who is on probation or parole is in  
478 default, the supervising probation or parole officer shall provide

479 notice of the default to the clerk. The offender shall be informed  
480 of the consequences of default and additional measures that may  
481 be taken for the collection of restitution or the unpaid balance  
482 thereof, including but not limited to the assessment of further  
483 financial penalties, wage assignment, contempt proceedings, revo-  
484 cation proceedings, imprisonment, suspension or non-renewal of a  
485 motor vehicle operating license, interception of tax returns, and  
486 interception of any lottery proceeds. The court shall have the dis-  
487 cretion to order payment of an interest penalty of at least five per  
488 cent per annum on the total unpaid portion of any restitution order  
489 that is in default.

490 (d) If an offender sells, conveys, assigns or conceals property  
491 with the intent to lessen or impair the offender's ability to pay  
492 restitution, the offender may be subject to the sanctions stated in  
493 section 30 of chapter 266, or any successor thereto.

494 Section 14.

495 A restitution payment plan shall not be modified for any reason  
496 without prior approval of the court following a restitution hearing.  
497 If the court holds a restitution modification hearing at the request  
498 of an offender, the offender's attorney or the offender's super-  
499 vising probation officer, the court must notify the victim and the  
500 prosecutor at least five business days before the hearing. A victim  
501 has the right to be present at the hearing and to express in writing  
502 or oral statement any objection to the proposed modification. Any  
503 restitution payment plan which is terminated or reduced without  
504 giving prior notice to the victim of a hearing to review the order  
505 and the opportunity for the victim to be present and heard on the  
506 issue shall be void and the original order shall remain in effect  
507 until a new hearing is granted and the victim has the opportunity  
508 to be present and heard. If any modifications to the restitution  
509 payment plan are made, the court must make written findings on  
510 the record.

511 Section 15.

512 (a) When the criminal conduct of an offender causes financial  
513 losses to multiple victims, the court shall determine priority in  
514 receipt of payments among victims on the basis of the seriousness  
515 of the harm each suffered and other factors deemed appropriate by  
516 the court. The court may order payments to be made on a pro-  
517 rated basis among the victims, or in any other manner the court  
518 deems appropriate.

519 (b) When the court orders restitution payments to both the  
520 victim and to the victim compensation program, there shall be full  
521 payment to the victim for all financial losses before the victim  
522 compensation program is reimbursed.

523 (c) When a determination of the order of priority for payments  
524 required of an offender must be made by the court or other crim-  
525 inal justice system personnel required to assess and collect court-  
526 ordered fines, assessments and restitution, the victim witness  
527 assessment mandated pursuant to section 8 of chapter 258B of the  
528 General Laws shall be the offender's first obligation and restitu-  
529 tion shall be the offender's second obligation.

530 (d) In the event that the court has ordered restitution to be made  
531 to a victim and that victim dies prior to the completion of said  
532 restitution, the remaining payments shall be made to the estate of  
533 the deceased victim. If an offender has paid restitution to the court  
534 pursuant to this chapter and the victim designated to receive resti-  
535 tution cannot be located with reasonable effort for a period of one  
536 year from the date of the last payment or has died and no one from  
537 the victim's estate claims the right to restitution for a period of  
538 three years from the date of the last payment, the clerk shall  
539 deposit the amount of restitution unable to be paid into the victim  
540 compensation fund maintained by the attorney general pursuant to  
541 section 4C of chapter 258C of the General Laws, and it shall be  
542 used to assist other crime victims.

543 Section 16.

544 In determining restitution, where it appears that more than one  
545 offender is responsible for the criminal conduct that resulted in  
546 financial losses for a victim, the court shall require each offender  
547 to be jointly and severally liable for the full amount of the finan-  
548 cial losses to the victim, unless the court determines otherwise. In  
549 cases where there are more than one offender, the victim shall not  
550 recover financial losses in excess of the amount of financial losses  
551 ordered by the court.

552 Section 17.

553 An order of restitution awarded under this chapter shall not  
554 limit or impair the right of a victim to file a further civil action  
555 against the offender or a third party or to recover civil damages  
556 arising from the same facts or events as the criminal case against  
557 the offender. However, any civil damages awarded to the victim

558 from the offender shall be reduced by the amount of restitution  
559 already paid to the victim for those financial losses that are speci-  
560 fied in the restitution order against the offender and are included  
561 in the civil damage award. The entry of a restitution order shall  
562 toll the applicable statute of limitations for a civil action for dam-  
563 ages arising out of the same facts.

564 Section 18.

565 A restitution order under this chapter shall not limit or impair  
566 the right of a victim to apply for financial compensation from the  
567 victim compensation program, or to receive any other govern-  
568 mental financial assistance and services needed as a result of the  
569 crime. The issuance of a financial award by the victim compensa-  
570 tion program shall in no way limit a court's determination of a  
571 victim's financial losses or of the offender's restitution payment  
572 plan.

573 To the extent that financial compensation has been awarded, or  
574 may be awarded, to a victim by the victim compensation program,  
575 the restitution order shall provide that payment first be made to  
576 the victim to the extent of financial losses that are not covered by  
577 the victim compensation program, exceed the program's statutory  
578 or regulatory limits or are additional expenses not covered by the  
579 victim's original or supplemental applications for compensation.  
580 The restitution order shall further provide that, once the victim has  
581 been reimbursed for the full amount of the victim's financial  
582 losses, all subsequent payments of the offender shall be made  
583 directly to the victim compensation program to the extent of com-  
584 pensation actually paid by the victim compensation program, and  
585 shall be deposited to the victim compensation fund maintained by  
586 the attorney general pursuant to section 4C of chapter 258C of the  
587 General Laws.

588 Section 19.

589 In order to facilitate the process for determining restitution and  
590 providing payments to victims who suffer financial losses, each  
591 victim who suffers financial losses shall be required, prior to sen-  
592 tencing, to complete a separate financial impact report, to provide  
593 the prosecutor with all bills, receipts and other information veri-  
594 fying the victim's financial losses, and to provide a copy of any  
595 application for financial compensation made to the victim com-  
596 pensation program. A victim's failure to provide such information



597 to the prosecutor in a timely manner may render the victim ineli-  
598 gible for restitution under this chapter.

599 If necessary, a prosecutor or victim-witness advocate shall  
600 assist the victim in preparing the financial impact report. The  
601 victim shall provide the prosecutor, the court and the supervising  
602 probation officer, if any, with a current address to facilitate pay-  
603 ment to the victim and to provide notice of future court events.  
604 Any victim who has applied for financial compensation from the  
605 victim compensation program shall be required to provide notice  
606 to the victim compensation program whenever the victim has  
607 received restitution from an offender for financial losses which  
608 were the basis of a victim compensation program award.

609 Section 20.

610 When the court orders an offender to pay restitution, the court  
611 shall, at the disposition of the case against the offender, inquire  
612 whether any monies were posted by the offender for the purposes  
613 of bail. Whenever cash bail has been posted by the offender as the  
614 principal and is not forfeited or assigned, the court shall order that  
615 the bail be used to offset the offender's restitution obligations to  
616 the victim.

617 Section 21.

618 Pursuant to section 4 of chapter 258B of the General Laws, the  
619 victim and witness assistance board shall hold periodic training  
620 sessions and provide written materials to law enforcement and  
621 other criminal justice personnel on the subject of victim restitution  
622 and victim rights under this chapter.

1 SECTION 2. Section 92 of chapter 276 of the General Laws is  
2 hereby repealed.